

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition—in connection with Schwegmann's proposed acquisition of supermarkets currently owned by National Holdings, Inc.—this consent agreement, accepted subject to final Commission approval, would require, among other things, the Louisiana-based corporation to divest seven stores in the New Orleans area to Commission-approved purchasers, and would require the respondent, for ten years, to obtain Commission approval before acquiring an interest in a supermarket, or another entity that operates a supermarket, in the relevant area.

DATES: Comments should be received on or before May 15, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald Rowe, FTC/S-2105, Washington, DC 20580. (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of Schwegmann Giant Super Markets, Inc.'s ("Schwegmann") proposed acquisition of certain assets of National Holdings, Inc. and certain affiliates ("National"), and it now appearing that Schwegmann, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an Order to divest certain assets and to cease and desist from certain acts, and providing for other relief.

It is hereby agreed by and among proposed respondent, its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent Schwegmann Giant Super Markets, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its office and principal place of business located at 5300 Old Gentilly Road, New Orleans, Louisiana 70126.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of the complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same time provided by statute for other orders. The

Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement, to the attention of the officer signing this agreement, shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file verified written reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

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It is ordered that, as used in this Order, the following definitions shall apply:

A. *Respondent* or *Schwegmann* means John F. Schwegmann and Schwegmann Giant Super Markets, Inc., its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Schwegmann Giant Super Markets, Inc., their successors and assigns, and their directors, officers, employees, agents, and representatives.

B. *Assets to be divested* means the supermarket assets described in Paragraph II.A. of this Order.

C. *Commission* means the Federal Trade Commission.

D. *Supermarket* means a full-line retail grocery store that carries a wide variety of food and grocery items in particular product categories, including bread and dairy products; refrigerated and frozen food and beverage products; fresh and prepared meats and poultry; produce, including fresh fruits and vegetables; shelf-stable food and beverage products, including canned and other types of packaged products; staple foodstuffs, which may include salt, sugar, flour, sauces, spices, coffee, and tea; and other grocery products, including nonfood items such as soaps, detergents, paper goods, other household products, and health and beauty aids.